U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10447356

Date: JULY 14, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an attorney, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy,

cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[2]

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The Director also found substantial merit in the proposed endeavor and we agree; however, the Director concluded that the record does not establish that the endeavor has national importance. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner initially described the proposed endeavor as "[drafting] legal documents and contracts, litigat[ing] claims, represent[ing] clients, [and settling] disputes between organizations" with a specialty in environmental and energy law.[3] The Petitioner also described her prospective position as a "self employed expert environmental consultant."

In response to the Director's request for evidence (RFE), the Petitioner elaborated that, "[i]n the United States, I will serve as an environmental and renewable-energy attorney who focuses on sustainable initiatives to conserve local environments, protect local waters, create new environmentally friendly housing units, and help to cut greenhouse gases." The Petitioner also described her current position as a senior attorney at the Office of the Public Advocate in the [redacted] for which she is "responsible for environmental research, constituent services, land use renewal applications, future housing developments, and implementing new statutes like the [redacted] Clean Up Act"; however, the Petitioner indicated that, "I have been offered a full-time and permanent job offer, which I plan to accept when my visa is approved."

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, such as "certain improved manufacturing processes or medical advances [resulting in] national or even global implications within a particular field" and endeavors that "have significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Dhanasar*, 26 I&N Dec. at 889-90.

Accordingly, whether the fields of environmental or energy law in general have national importance, and whether the Petitioner's prior career abroad had national importance in that country, are not the focus of the inquiry. *See id.* Instead, the focus of the inquiry into determining whether the proposed endeavor has national importance is on the details about "the specific endeavor that the foreign national proposes to undertake," as established in the record. *Id.*

On appeal, the Petitioner asserts that "recommendation letters, documentary evidence, and significantly, probative background materials and scholarly articles" establish that the proposed

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.
[3] Although we do not discuss each document in the record for brevity, we have reviewed the record in its entirety.

endeavor is nationally important. The Petitioner directs our attention to quotes from several letters submitted in response to the Director's RFE. The letters are from a project director at [redacted].; [redacted], an attorney; the managing director of [redacted]; a project manager at [redacted]; and a cultural attaché in the [redacted] Embassy in [redacted] Cuba.

In general, the letters focused on the Petitioner's past achievements, which is relevant to the second *Dhanasar* prong regarding whether a petitioner is well-positioned to pursue an endeavor, but not relevant to whether the *prospective* endeavor has national importance. *See Dhanasar*, 26 I&N Dec. at 889-90. For example, the letter from [redacted] asserted that the Petitioner "has been integral in conserving natural resources and habitats, protecting energy companies and consumers alike, and reinventing how environmental and energy law should be practiced—that is, as a complimentary partnership instead of divergent competitors." As another example, the cultural attaché in the [redacted] Embassy in [redacted] Cuba, reviewed the Petitioner's "past research presentations and publications," the issues "she focused on" in her prior work, and how, in the past, the Petitioner "changed the direction of [redacted] energy, environmental, and corporate law." However, the statements that the Petitioner "has been integral" and the review of the Petitioner's past work and accomplishments are retrospective, rather than addressing how "the specific endeavor that the foreign national proposes to undertake" prospectively may have national importance under the *Dhanasar* framework. *See id.* Similarly, the letter from a project director at [redacted] asserted, "with the U.S. still so heavily dependent on oil and gas, and corporate interests often superseding those of the environment, the skill set that [the Petitioner] brings is of unquestionable national interest." However, that statement about the Petitioner's skill set—and the remainder of the letter—does not address how "the specific endeavor that the foreign national proposes to undertake" may have national importance under the *Dhanasar* framework. *See id.*

Some letters provided unsupported claims about the breadth and effect of the Petitioner's work. For example, the letter from a project manager at [redacted] asserted that the Petitioner's "brilliant work will not only benefit the U.S. on a national basis, but also has the power to re-shape the international industry and improve the environment, the economy, energy efficiency, healthcare, and human rights around the world." The letter summarized the Petitioner's prior involvement with various "structures that define local communities [in [redacted]] and will remain standing for generations and centuries in the future" to exemplify the Petitioner's "renowned reputation and national importance." However, the letter did not elaborate on how "the specific endeavor that the foreign national proposes to undertake" prospectively in the United States may have national importance under the *Dhanasar* framework. *See Dhanasar*, 26 I&N Dec. at 889-90. As another example, the letter from a cultural attaché in the [redacted] Embassy in [redacted] Cuba, generally asserted that, "[b]y mirroring [the Petitioner's past efforts in [redacted]] in the United States, she will save the country billions of dollars in unnecessary energy, environmental, and health care costs alone." Although the letter generally cited an estimation from "Oil Change International" that the United States "is currently spending over $21 billion every year to find and produce additional fossil fuels, which is neither practical, nor sustainable long-term," the letter did not identify probative, independent evidence that corroborates the estimation of "billions of dollars in unnecessary . . . costs" that the proposed endeavor would save, and how the endeavor would accomplish that.

As another example of unsupported claims, the [redacted] project director's letter summarized an unidentified report from "the [redacted] Systems at the University of [redacted]." However, the record does not contain the unidentified University of [redacted] report in order to corroborate the information relayed in the project director's letter. Without sufficient, probative, independent information corroborating the project director's summary of the University of [redacted]'s report, the assertions bear minimal probative value. The Petitioner quotes other portions of the project director's letter, asserting that the Petitioner would "assess[] local environmental concerns, government regulations, and industrial energy priorities until a common, safe, effective, and productive solution is found," that "she would be able to address the disparity in energy costs and environmental issues by forming a bridge between the law, the oil industry, and renewable energy initiatives by developing projects like the ones supported by the U.S. Department of Energy," and that she would "help a new generation of attorneys follow in her footsteps." However, the letter did not elaborate on how the Petitioner would find the solution, form the bridge, and help younger attorneys, nor does it establish whether finding the solution, forming the bridge, and helping younger attorneys would result in certain improved processes or advances, resulting in national or global implications in the fields of environmental or energy law. *See Dhanasar*, 26 I&N Dec. at 889-90.

The Petitioner also misattributes claims in certain letters. For example, the Petitioner asserts on appeal that the letter from the managing director of [redacted] stated that "[the Petitioner] pursues 'innovative technological solutions for a sustainable future' by forming 'priceless relationships . . . between multinational oil corporations, environmental research scientists, and the law.'" We note that the letter in question specifically stated that "[redacted] is dedicated to providing innovative technological solutions for a sustainable future" and that the Petitioner "was hired as an expert consultant and legal advisor at [redacted]." The letter did not specifically state that "[the Petitioner] pursues 'innovative technological solutions for a sustainable future,'" as the Petitioner indicated on appeal.[4] A petitioner's submission of false statements may call into question the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

As another example of misattributed claims, the Petitioner states on appeal that the letter from the cultural attaché in the [redacted] Embassy in [redacted] Cuba, asserted that "[the Petitioner's] legal expertise and vast experience will not only save the country millions of dollars in fees and expenses [and] she will also save natural resources, environments, and species from extinction, like she has repeatedly done in [redacted]." However, the quoted language does not appear in the cultural attaché's letter. Instead, that language appears in the letter from [redacted] As noted above, inconsistencies in a record raise serious concerns about the veracity of a petitioner's assertions. Doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. Beyond the Petitioner's inaccurate attribution of the quoted language, [redacted]'s letter did not identify probative, independent evidence that corroborates the estimation of fees and expenses that the Petitioner's expertise and experience will save the United States. The letter also did not specifically identify a particular natural resource, environment, or species that the proposed endeavor would save, and how the endeavor would accomplish that.

[4] Similar to other letters, this letter focused retrospectively on the work the Petitioner performed at [redacted], rather than addressing how "the specific endeavor that the foreign national proposes to undertake" prospectively, as summarized above, may have national importance under the *Dhanasar* framework. *See Dhanasar*, 26 I&N Dec. at 889-90.

In summation, the Petitioner's assertions on appeal contain inconsistencies with the recommendation letters and the letters do not establish whether "the specific endeavor that the foreign national proposes to undertake," is nationally important under the *Dhanasar* framework. *Id.*

The Petitioner next addresses on appeal documentary evidence and background information. The Petitioner begins by directing our attention to information from several reports regarding air quality and health. The Petitioner asserts that the Director erred by "dismiss[ing] these documents without analyzing the actual 'broader implications,' real-life impacts, or national benefits." The reports include a 2016 report from [redacted] University about air quality and pollution in [redacted], a Wikipedia page titled '[redacted]' a Patch article titled '[redacted]' and similar documents. The documents provide context to the issues the Petitioner intends to address through the proposed endeavor; however, they do not specifically identify the Petitioner and the proposed endeavor, nor do they discuss how the "the specific endeavor that the foreign national proposes to undertake," has national importance under the *Dhanasar* framework. *Id.*

The Petitioner next asserts on appeal that the Director erred by "highlight[ing] irrelevant facts, such as how the [redacted] Clean Up Act 'was enacted in June 2015, prior to the [P]etitioner's employment with the Public Advocate.'" However, the context of the Director's observation of the date on which the [redacted] Clean Up Act was enacted was to preface that "[i]t requires semiannual reports to be filed with the [redacted] and [redacted] regarding [redacted] cleanup and maintenance. Based on the evidence provided, it is not apparent what contribution the [P]etitioner has had with respect to the implementation of this initiative." The year in which the [redacted] Clean Up Act was enacted, compared to the period in which the Petitioner was employed by the Public Advocate, is relevant because the Petitioner asserted that she is "responsible for . . . implementing new statutes like the [redacted] Clean Up Act." Furthermore, the Director's acknowledgement of the enactment date does not appear to "highlight" that fact, as opposed to noting the time that has passed since the enactment date, the apparent extent of the implementation during that time, and that the record does not establish how the Petitioner contributed to the implementation.

The Petitioner additionally objects on appeal to the Director's characterization of the semiannual reports as "merely an administrative report filing function," instead characterizing it as "vital work towards ensuring [redacted] cleanup and maintenance.'" However, the Petitioner does not provide evidence on appeal supporting her claims and overcome the Director's characterization of her work.

The Petitioner next objects on appeal to the Director's assertion that a "national interest waiver is not a blanket waiver for an entire group of individuals or lawyers, just because they happen to be working in the areas of environmental and renewable-energy law." The Petitioner characterizes this as an "oversimplification [that] could be used as a weak excuse by USCIS to deny that any profession meets the criteria for a national interest waiver. The Petitioner also rebuts that she "has never argued that she merits a national interest waiver because 'all' environmental attorneys are covered statutorily or perform work of 'national importance.'" However, as discussed above, in determining national importance, the relevant question is not the importance of the industry, field, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Although the Director's comment about a blanket waiver was unnecessary, the overall context of the Director's discussion is consistent with

Dhanasar. For example, in the same paragraph, the Director stated that "[the Petitioner] must establish *her particular endeavor* has national importance," and concluded that "[the Petitioner] has not established that *her proposed endeavor* is of national importance" (emphasis added).

The Petitioner concludes her discussion on appeal of whether the proposed endeavor is nationally important by summarizing "advocacy campaigns" and "[s]pecial projects" she has "the opportunity to influence," such as "the [redacted] Clean Up Act," discussed above; "the creation of green infrastructure"; "the development of bio-swales, which will reduce water run-off into a combined sewer overflow system and ensure less water contamination after heavy rainfalls"; and "reduc[ing] [redacted]s carbon footprint by promoting eco-friendly modes of transportation and a cost-efficient public solar program, which will move underrepresented communities towards renewable energy and save costs in the future." The Petitioner again does not elaborate on her contribution to implementing the [redacted] Clean Up Act. The Petitioner also does not specify the green infrastructure that her influence would create, and how she would accomplish that. Similarly, the record does not establish how the Petitioner's endeavor would influence the development of bio-swales or the promotion of eco-friendly modes of transportation and a cost-efficient public solar program.

The Petitioner does not describe how these projects or other aspects of the proposed endeavor summarized above would result in certain improved processes or advances resulting in national or even global implications within a particular field, or whether they have "significant potential to employ U.S. workers." *Dhanasar*, 26 I&N Dec. at 889-90. Although the Petitioner generally asserts that a cost-efficient solar program "will move underrepresented communities towards renewable energy and save costs in the future," the record does not specifically establish the positive economic effects the endeavor—in whole or in part—would have, particularly in an economically depressed area, in order for us to determine whether those economic effects would be substantial enough to rise to the level of national importance. For example, the general assertion that the program would "save costs" does not specify what costs would be saved, the amount of savings in terms of dollars annually, who would realize the costs saved, and other salient details that may establish the extent of the potential positive economic effects of the proposed endeavor.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, and therefore is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.